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November 10, 1998

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Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: **Written *Ex Parte* Presentation by the
Association for Local Telecommunications Services**
Reciprocal Compensation for Local Calls to ISPs; CC Docket No. 96-98;
CCB/CPD No. 97-30; CC Docket Nos. 98-79, 98-103, 98-161, & 98-168/

Dear Ms. Salas:

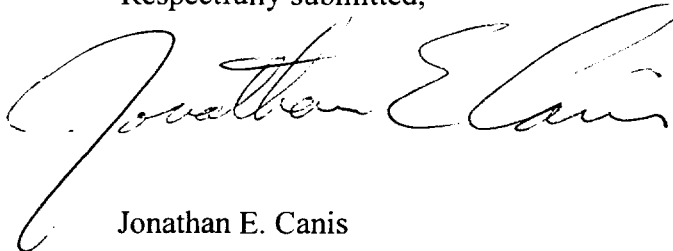
Pursuant to § 1.1206(b)(1) of the Commission's Rules, the Association for Local Telecommunication Services ("ALTS") submits this written *ex parte* presentation related to the above-captioned docketed proceedings. The attached Talking Points were circulated to a number of Commissioners at the NARUC Conference in Orlando on November 9-10, 1998.

It is of critical importance to ALTS' members that, if the Commission should assert jurisdiction over dial-up calls to Internet service providers ("ISPs"), such action must not disrupt existing compensation arrangements that are currently governed by interconnection agreements, and that have been the subject of final decisions by 24 State regulatory commissions. In order to eliminate any ambiguity that could have such a disruptive effect, this presentation provides proposed language regarding the Commission's jurisdiction over dial-up calls to ISPs in a way that ensures the integrity of the decisions by the 24 State regulatory bodies that mandate payment of reciprocal compensation when such traffic is passed between incumbent and competitive local exchange carriers.

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Pursuant to 1.1206(b)(1), ALTS submits an original and one (1) copy of this written *ex parte* notification for inclusion in the public record of each above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jonathan E. Canis". The signature is written in black ink and is positioned above the printed name.

Jonathan E. Canis

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
International Transcription Service

ALTS TALKING POINTS

The FCC Should Declare That Dial-Up Calls to ISPs Are Jurisdictionally Mixed, But That It Will Continue to Defer to State Regulation

- The FCC and the State Commissions should seek to advance three goals:
 - Reaffirm Federal involvement with dial-up ISP traffic while continuing the significant role of State regulation;
 - Ratify existing reciprocal compensation agreements;
 - Allow ISPs to continue to purchase State-tariffed business line service.
- ALTS believes that the FCC and the State Commissions can achieve these three goals by ruling that:
 - Dial-up ISP traffic is jurisdictionally mixed.
 - Because it is not currently possible to determine the location of the server or servers reached on the Internet, there is no practical way to separate ISP traffic into interstate and intrastate components.
 - Consequently, pursuant to Sections 152(a) and Section 201-205 of the Communications Act, the FCC could exercise exclusive Federal authority over ISP traffic if it found that State regulation was negating valid Federal policies.
 - In the present case, however, the FCC finds that existing State regulation applicable to ISP traffic is consistent with FCC policies. Therefore, the FCC will continue to share with the States responsibility for regulating this traffic.
 - Under this approach, the States will continue to apply their existing local telecommunications regulations to ISP traffic – subject only to the requirement that they continue to treat ISPs in the same manner as other end-users by treating calls to ISPs as local telecommunications traffic.
 - The FCC will initiate a proceeding to consider whether this approach needs to be modified. Such proceeding will not disrupt existing contractual arrangements under the current interconnection agreements.
- The ALTS proposal is consistent with established judicial precedent.
 - In the *Access Charges Appeal*, the Eighth Circuit held that – because dial-up traffic between an ISP and its subscribers is jurisdictionally mixed and inseverable – the FCC has significant “discretion” to divide regulatory responsibility between the Federal and State jurisdictions.

- The FCC frequently has deferred to the States regarding regulation of jurisdictionally mixed services. *See Illinois Bell Telephone v. FCC*, 883 F.2d 104 (D.C. Cir. 1989) (Centrex); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (vertical services).
- At the same time, State regulations must be applied in a manner that does not discriminate against interstate traffic. *See New York Telephone v. FCC*, 631 F.2d 1059 (2d Cir. 1980) (State tariffs that discriminate against customers that interconnect local facilities to interstate private networks are unlawful).
- The ALTS proposal is consistent with the FCC's recent *DSL Order*.
 - In the *DSL Order*, the FCC found that traffic between an ISP and its subscribers is jurisdictionally mixed, and that DSL offerings used to carry this traffic are special access services. The FCC therefore held that the "ten percent rule" requires Federal tariffing of DSL services used to carry this traffic.
 - While dial-up ISP traffic also is jurisdictionally mixed, the "ten percent rule" does not apply to this traffic.
 - Paragraphs 28 and 29 of the *DSL Order*, moreover, expressly leave open the questions whether the inseverability doctrine applies to ISP traffic and whether LECs should be required to pay reciprocal compensation to CLECs with which they exchange ISP traffic. Additionally, the Commission bears the burden of demonstrating that state regulation "negates the exercise by the FCC of its own lawful authority over interstate communications."
- The ALTS proposal balances the interests of all parties.
 - The FCC reaffirms Federal involvement with dial-up ISP traffic.
 - The States may continue to enforce their existing reciprocal compensation and tariff regimes.
 - CLECs will receive compensation for traffic exchanged under existing agreements.
 - ISPs will continue to be able to purchase State-tariffed business lines.
 - The States will have the opportunity to participate with the FCC in a new proceeding, where all parties may argue for a prospective change to the status quo.